

REMARKS

This Amendment is submitted in reply to the Final Office Action mailed on January 26, 2010. A request for continued examination ("RCE") and a petition for a one month extension of time are submitted herewith. The Commissioner is hereby authorized to charge \$940.00 for the RCE and the extension of time and any additional fees that may be required or credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-685 on the account statement.

Claims 1-13, 16-18, 20-32, 36-37, 47-51, 63-71, 74-75, 81-82, 86-92 and 95 are pending in the application. Claims 14-15, 19, 33-35, 38-46, 52-62, 76-79, 83-85 and 93-94 were previously canceled without prejudice or disclaimer. In the Office Action, Claims 18, 20 and 47-49 are objected to; Claim 89 is rejected under 35 U.S.C. §112; Claims 1-13, 16-18, 20-32, 36-37, 47-48, 63-71, 74-75, 81-82, 86-92 and 95 are rejected under 35 U.S.C. §102; and Claims 49-51 and 89 are rejected under 35 U.S.C. §103. In response, Claims 1, 17- 18, 20, 22-24, 26-32, 36, 47-49, and 86 have been amended, and Claims 5-11, 16, 21 and 82 have been canceled without prejudice or disclaimer. The amendments do not add new matter. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

Applicants have amended Claims 18, 20 and 47-49 to address the informalities cited by the Patent Office. Accordingly, Applicants respectfully request that the objections to these claims be withdrawn.

In the Office Action, Claim 89 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants respectfully disagree and believe that the scope of Claim 89 is clear to the skilled artisan. Claim 89 recites that the blank comprises another side panel. The blank forms a container body when folded. This additional side panel is glued to a rear panel and that is used to join the rear panel to the side panel of the container body. See U.S. Patent Publication No. 2008/0128478, Figure 4. For example, when the container has been made up, a joining additional panel 21 is glued, or joined, with its outer surface or face in contact with the inner surface or face of the rear panel 12. See U.S. Patent Publication No. 2008/0128478,

paragraph 49. Based on at least these noted reasons, Applicants believe that Claim 89 fully complies with 35 U.S.C. §112, second paragraph.

Accordingly, Applicants respectfully request that the rejection of Claim 89 under 35 U.S.C. §112 be reconsidered and withdrawn.

In the Office Action, Claims 1-2, 4-6, 16-17, 20-21, 24-25, 47-49, 63, 66-68, 70-71, 75 and 82 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,913,292 to Field ("*Field*"). Applicants respectfully traverse the rejection for at least the reasons set forth below.

Amended independent Claim 1 recites, in part, the container body having a tubular shape with a polygonal base a front wall, a rear wall and at least one of a pair of front side walls and a pair of rear side walls. The container body further comprises a lid for closing the product outlet opening, the lid extending from the container body and being connected to the container body. The lid comprises a first and a second side outer wall. The container body further comprises stiffening means for maintaining the container body in an open condition, the stiffening means located at the product outlet opening. The stiffening means is connected to and extends from at least one of the front side walls or the rear side walls of the container body. The amendments are supported in the specification, for example, in U.S. Patent Publication No. 2008/0128478, paragraphs 72-74, and Figures 1-4.

Using the presently claimed container provides several advantages. For example, the container makes it possible to channel disk-shaped pieces with a diameter greater than the width of the front guide wall, it is easily gripped by a user, holds a relatively large quantity of edible product, is extremely easy to manufacture and provides an especially "effective seal" because the engagement and retaining means that hold the lid snapped shut on the body are located at the front wall, which is opposite the rear where the rotation hinge that connects to the lid to the container body is positioned. Further, the special shape of the container body gives the snap-shut retaining tab on the front wall optimum elasticity, so that when the tab engages with the teeth on the lid, there is a clear, characteristic noise or "click." Moreover, the use of stiffening means advantageously holds the container body in an open position.

Anticipation is a factual determination that "requires the presence in a single prior art disclosure of each and every element of a claimed invention." *Lewmar Marine, Inc. v. Barient*,

Inc., 827 F.2d 744, 747 (Fed. Cir. 1987) (emphasis added). Federal Circuit decisions have repeatedly emphasized the notion that anticipation cannot be found where less than all elements of a claimed invention are set forth in a reference. See, e.g., *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002). As such, a reference must clearly disclose each and every limitation of the claimed invention before anticipation may be found.

Field fails to disclose or suggest stiffening means connected to and extending from at least one of the front side walls or the rear side walls of the container body as required by independent Claim 1. The Examiner asserts that element 30 of the container of *Field* is the stiffening means. See Office Action, paragraph 7. Nevertheless, element 30 refers to a separate blank structure that fits as an insert portion of the container. See *Field*, column 3, lines 22-61. The blank structure 30 is not connected to and does not extend from the wall of the container of *Field*. Rather, it is an entirely separate structure inserted into the container. As a result, element 30 is not a stiffening means connected to and extending from at least one of the front side walls or the rear side walls of the container body in accordance with Claim 1.

Because *Field* fails to disclose each and every element of independent Claim 1, *Field* fails to anticipate Claim 1, along with any of the claims that depend from Claim 1. Accordingly, Applicants respectfully submit that the anticipation rejection to *Field* with respect to the pending claims be reconsidered and withdrawn.

In the Office Action, Claims 1-13, 16-18, 20-32, 36-37, 47-48, 63-70, 74-75, 81-82, 86-92 and 95 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,205,775 to Swan ("*Swan*"). Applicants respectfully traverse the rejection for at least the reasons set forth below.

Amended independent Claim 86 recites, in part, blanks for making a container wherein the side walls extend from the first and second outer edges, on the side opposite the one on which the upper panel is connected to the transversal end of the side panel of the container body. The blank comprises an upper panel extending from a transversal end of a side panel to form a lid upper wall and a transverse stiffening wall extending from a transversal end of another side panel. The blank further comprises tabs extending, through pre-creasing or fold lines, from rear and front side walls of the container, forming means for connecting the transverse stiffening wall to the front side walls and to the rear side walls of the container body. The amendments are

supported in the specification, for example, in U.S. Patent Publication No. 2008/0128478, paragraphs 72-74, and Figures 1-4.

Swan fails to disclose or suggest stiffening means connected to and extending from at least one of the front side walls or the rear side walls of the container body as required by independent Claim 1. *Swan* also fails to disclose or suggest a blank comprising a transverse stiffening wall extending from a transversal end of another side panel with tabs extending, through pre-ceasing or fold lines, from rear and front side walls of the container, forming means for connecting the transverse stiffening wall to the front side walls and to the rear side walls of the container body as required by independent Claim 86.

Swan discloses polygonal containers having container sides and a bottom assembly that are adapted for interlocked engagement. See *Swan*, Abstract. The Patent Office asserts the element 154 is the stiffening means. Applicants respectfully disagree and submit that element 154 of *Swan* is a mating stacking means 154 projecting above the surface of the lid assembly 152 for covering the opening at the top of the polygonal container enclosure. See *Swan*, column 12, lines 22-36. As a result, element 154 is not a stiffening means connected to and extending from at least one of the front side walls or the rear side walls of the container body in accordance with Claim 1 or a transverse stiffening wall extending from a transversal end of another side panel in accordance with Claim 86.

Swan further discloses the use of “lid securement flaps 194, 196,” which are hingedly disposed at the top edge of the side panels and are used to secure (via locking engagement) the corresponding securement panel distal edges of the lid. See *Swan*, column 13, lines 40-62. Accordingly, the “lid securement flaps” of *Swan* cannot connect a transverse stiffening wall to the container body. Instead, the “lid securement flaps” secure to the lid of the container. The lid of the presently claimed container is separate and distinguishable from the transversal stiffening wall.

Because *Swan* fails to disclose each and every element of independent Claims 1 and 86, *Swan* fails to anticipate independent Claims 1 and 86, along with any of the claims that depend from Claims 1 and 86. Accordingly, Applicants respectfully submit that the anticipation rejection to *Swan* with respect to the pending claims be reconsidered and withdrawn.

In the Office Action, Claims 86-92 and 95 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,887,781 to Marx et al. ("*Marx*"). Applicants respectfully traverse the rejections for at least the reasons set forth below.

Marx fails to disclose or suggest a blank comprising a transverse stiffening wall extending from a transversal end of another side panel with tabs extending, through pre-creasing or fold lines, from rear and front side walls of the container, forming means for connecting the transverse stiffening wall to the front side walls and to the rear side walls of the container body as required independent Claim 86. At most, *Marx* discloses a bottom panel 30 attached to one of the side panels 113. *Marx* does not disclose an additional transverse stiffening wall extending from a transversal end of another side panel. Rather, the outer bottom panel 21 includes two sections, section 23 and section 24 that are hingedly connected to one another along crease score fold line 25. The particular configuration of section 23 and section 24 is such so as to receive portions of the remaining end panels when the carton is in the erected condition. See *Marx*, column 3, lines 40-49 and Figure 23.

Because *Marx* fails to disclose each and every element of independent Claim 86, *Marx* fails to anticipate Claim 86, along with any of the claims that depend from Claim 86. Accordingly, Applicants respectfully submit that the anticipation rejection to *Marx* with respect to the pending claims be reconsidered and withdrawn.

In the Office Action, Claims 49-51 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Swan* in view of U.S. Patent No. 2,000,210 to Bayless ("*Bayless*"). Claim 89 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Marx* in view of *Bayless*. Applicants respectfully submit that the patentability of Claims 1 and 86 as discussed above renders moot the obviousness rejections of Claims 49-51 and 89 that depend from Claims 1 and 86, respectively. In this regard, the cited art fails to teach or suggest the elements of Claims 49-51 and 89 in combination with the novel elements of Claims 1 and 86. Moreover, the Patent Office merely relies on the cited references to recite elements of the dependent claims.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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